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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JUSTIN M. HEGNEY,  
11 Petitioner,

12 v.

13 ELDON VAIL,  
14 Respondent.

Case No. C07-5550FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DENYING HABEAS CORPUS  
PETITION

15 The Magistrate Judge, in his Report and Recommendation of this 28 U.S.C. § 2254 Petition,  
16 reviewed the seven issues Petitioner presented for review and concluded that under the standard of  
17 review for federal court intervention in the state judicial process, there was no error of a  
18 constitutional dimension. Petitioner filed objections that the Recommendation failed to address key  
19 arguments, used the wrong standard of review, and reached the wrong conclusions. Respondent  
20 filed a response in opposition to the objections. Petitioner then replied to that response.

21 The issues have been exhaustively reviewed in the State court system, and they have been  
22 fully reviewed by the Magistrate Judge. This Court is not convinced by Petitioner's arguments for  
23 rejecting the Report and Recommendation and granting habeas relief. For example, Petitioner  
24 argues that the accomplice liability instruction was ambiguous, citing *Sarausad v. Porter*, 479 F.3d  
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1 671 (9<sup>th</sup> Cir. 2007), *cert. granted sub nom., Waddington v. Sarausad*, 128 S. Ct. 1650 (2008). The  
2 Court agrees with the Magistrate Judge that the instruction was not ambiguous. The accomplice  
3 instruction properly stated the elements of accomplice liability, and the trial court's instructions also  
4 explained the felony murder rule in the context of the robbery charged. The *Sarausad* case is  
5 inapposite. In Hegney's case, the prosecutor's closing argument, in response to another  
6 codefendant's argument, examined the language from the instructions and how it applied to the facts  
7 in the case adduced at trial. There was no ambiguity regarding accomplice liability that the  
8 underlying crime was robbery in Petitioner's case.

9 Petitioner also argues that the procedure under RCW 13.40.110 where a judge decides  
10 whether or not a minor should be charged as an adult violates the United States Constitution. The  
11 Court agrees with the Magistrate Judge and the Washington Court of Appeals in its review of this  
12 contention. The Washington Court stated: "Rather, 'the sole purpose of a decline hearing is to  
13 determine whether the best interests of the child and of society would be served by retention of the  
14 juvenile court authority over him or whether the juvenile, under all the circumstances, should be  
15 transferred to be tried as an adult.'" The Court concluded:

16 And again, we emphasize that equal protection is not intended to provide complete  
17 equality among similarly situated juveniles who are charged with crimes; rather it is  
18 intended to provide equal application of RCW 13.40.110, and the decline hearings  
19 thereunder. Thus, individual results may vary. As this law easily passes the rational  
20 relationship test, it does not therefore, violate the federal and state equal protection  
21 clauses.

22 (Dkt. # 1, attached decision denying Personal Restraint Petition, pp. 11-14.) Petitioner argues that  
23 the consequence of declining to try Petitioner as a juvenile subjected him to a greater penalty that  
24 was not determined by a jury; Petitioner's argument is without merit. The State Court examined the  
25 interests of the minor and those of society in general in making the decision at the decline hearing.  
26 Petitioner's equal protection argument is answered by the Court as quoted above. On the argument  
that children's brains differ from those of adults and that the legislature recognized this in its


1 legislation regarding the mandatory minimum sentence for murder for juveniles but did not allow for  
2 the new legislation to be applied retroactively, this Court finds no violation of equal protection. The  
3 Washington State Court of Appeals reviewed this issue, as did the Magistrate Judge. Petitioner has  
4 not demonstrated a violation of clearly established federal law, as determined by the Supreme Court,  
5 nor demonstrated that the decision was based on an unreasonable determination of the facts in light  
6 of the evidence; Petitioner's reference to international law notwithstanding.

7 On all the points raised by Petitioner, the Court concludes that the Magistrate Judge's Report  
8 and Recommendation must be adopted over Petitioner's objections. ACCORDINGLY,

9 IT IS ORDERED:

- 10 1. The Court ADOPTS the Report and Recommendation;  
11 2. Petitioner's federal *habeas corpus* petitioner is DISMISSED;  
12 3. The Clerk is directed to send copies of this Order to Petitioner and his counsel, to counsel  
13 for Respondents, and to Magistrate Judge J. Kelley Arnold.

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15 DATED this 27<sup>th</sup> day of October, 2008.

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18 FRANKLIN D. BURGESS  
19 UNITED STATES DISTRICT JUDGE  
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